IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 707 of 2000()

CC.12/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM
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APPELLANT/COMPLAINANT:

M/S.INTEGRATED FINANCE COMPANY LTD., TRIVANDRUM BRANCH, KARIMPANAL STATUE AVENUE, STATUE, TRIVANDRUM, REP. BY ITS AREA MANAGER SRI.SHAJI MONY.

BY ADV. SRI.M.BALAGOVINDAN

RESPONDENT/ACCUSED:

SURESH KUMAR.R., KUMAR SADANAM IRUMPIL, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.707 OF 2000 (D)

Dated this the 7th day of March, 2007

JUDGMENT

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act contending that cheque issued by the respondent was dishonored for “insufficiency of funds”. Appellant gave sworn statement and the case was adjourned to 3.5.2000 for the appearance of the accused. Since the complainant was not present accused was acquitted. In this case, I note that the case was posted only for return of summons. When the accused was present, presence of the complainant was not necessary. Even though under Section 256 (1) of the Code of Criminal Procedure, trial court justified in acquitting the accused for absence of the complainant, it should not be done mechanically. Case of the petitioner is that he and his advocate noticed the date of posting mistakenly and that is the reason for non-appearance. The reason stated is genuine. Since the notice send to the respondent from this Court was not returned and in the lower court also accused did

not appear. Fresh steps should be taken to serve notice on the accused. Complainant shall appear before the trial court on 2.4.2007. Accordingly appeal is allowed by way of remand.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal. 707 OF 2000 (D)

JUDGMENT

7th March, 2007